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Co-Counsel for the Debtor
Incredible Auto Sales LLC

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MONTANA**

IN RE:

INCREDIBLE AUTO SALES L.L.C.

Debtor

Case No. 06-60855-RBK

Judge Ralph B Kirscher

Hearing January 23, 2007

At 10:00 A.M. Billings Montana

SECOND AMENDED DEBTOR'S RESPONSE, RESISTANCE AND OBJECTION TO
US TRUSTEE'S MOTION TO CONVERT THE CHAPTER 11 TO A CHAPTER 7
SET FOR HEARING DATE JANUARY 23, 2007 AT 10:00 A.M BILLINGS, MONTANA

NOW COMES the Debtor, Incredible Auto Sales L.L.C., and files this Second Amended Response, Resistance and Objection to the Trustee's Motion to convert this case to a Chapter 7.

The Debtor resists this motion and asks the Court to deny this motion as to being totally without cause and not based on the corrects facts and not supported by the provisions of Bankruptcy Code Section 1112 (b)(1) and the Notice requirements under Bankruptcy Rule 2002 (a)(4).

IN SUPPORT hereof, the Debtor states as follows:

- 1.) This Debtor filed Chapter 11 on October 17, 2006 and since that date has been operating as Debtor-in-Possession.
- 2.) Since that date, all proceeds of all vehicle sales and repair sales have been deposited with approval of this Court and Hyundai Motor Finance (the "Secured Lender") into the Debtor's Trust Accounts.
- 3.) Reports on the contents of these Trust Accounts have been regularly provided to the Secured Lender without objection
- 4.) As part of the Cash Collateral Usage Agreement, this Debtor early in this case has changed the management structure of the operating Debtor as agreed with this Court and the Secured Lender as follows:
 - A.) Nick Gutierrez, the majority owner to no longer has check signing power under the Chapter 11.
 - B.) All Debtor-in-Possession Checks and Trust Account Transfers to be only handled and signed for by:
 - 1.) Ken Cornelison the General Manager; and
 - 2.) Zfaneece Gutierrez, the wife of Nick Gutierrez;

- 5.) Additionally, the Debtor had agreed with the Secured Lender and the Court that:
 - a.) They would not do any more wholesale sales to Graham Stanton, a Chevrolet Dealership owned by Nick Gutierrez and
 - b.) That Nick Gutierrez would have no management say so or control.
- 6.) Even though a long delay had occurred before this Court entered the Cash Collateral Order, the Debtor continues to operate and sell vehicles.
- 7.) The Debtor has employed an Automotive Broker, Southwest Brokerage Company to sell the Kia Franchise and assets of the Dealership.
- 8.) Contemporaneously herewith a Motion to approve a Sale Contract with Rimrock Chrysler Inc of Billings, Montana has been docketed and is being served.
- 9.) The Debtor has requested the approval of a Notice for Upset bids, which has also been filed so that higher bids can be solicited.
- 10.) As a result of this initial offer, a large ad has been placed by the Debtor in Crains Automotive News, which is read by almost all parties connected with the Retail Automotive Business. This ad will run for at least two weeks and has a large National circulation.
- 11.) Additionally, this Court has set a deadline of January 18, 2007 for the Debtor to file its Plan and Disclosure Statement.
- 12.) The Debtors proposal along with its sales efforts is toward confirming a Liquidating Plan to pay creditors.

- 13.) It should be obvious to the Court and other Creditors that a conversion in this case to a Chapter 7 with the appointment of a Panel Trustee would not be in the best interests of this Debtor, this estate and its creditors.
- 14.) In the first instance, to sell the Franchise and maximize the sale proceeds from a sale of assets, the Debtor needs to continue to operate the Dealership.
- 15.) Key provisions of any vehicle franchise is that for this franchise to be viable and continue valid and enforceable and not subject to cancellation, the Dealer must maintain and continue to maintain an operating business.
- 16.) This Debtor will continue an operating and viable business until the Franchise and assets are sold.
- 17.) The provision of the Bankruptcy Code relating to dismissal and/or conversion is 11 USC Section 1112(b)(1) of the Bankruptcy Code.
- 18.) This section as revised calls for the Court to determine whether conversion is in the best interests of creditors and the estate and the movant must establish "cause".
- 19.) "Cause" includes under Section 1112(b)(4) the following:
 - (A) Substantial or continuing loss or diminution of the estate and absence of a reasonable likelihood of rehabilitation.
 - (B) Gross mismanagement of the estate:
 - (C) failure to maintain appropriate insurance that poses a risk to the estate or to the public;
 - (D) unauthorized use of cash collateral substantially harmful to 1 or more creditor:
 - (E) failure to comply with an order of the court;

- (F) unexcused failure to satisfy timely any filing or reporting requirement established by this title or by any rule applicable to a case under this chapter;
- (G) failure to attend the meeting of creditors convened under section 341 (a) or an examination ordered under rule 2004 of the Federal Rules of Bankruptcy Procedure without good cause shown by the debtor;
- (H) failure timely to provide information or attend meetings reasonably requested by the United States trustee (or the bankruptcy administrator, if any);
- (I) failure timely to pay taxes owed after the date of order for relief or to file tax returns due after the date of the order for relief;
- (J) failure to file a disclosure statement, or to file or confirm a plan, within the time fixed by this title or by order of the court;
- (K) failure to pay any fees or charges required under chapter 123 of title 28;
- (L) revocation of an order of confirmation under section 1144;
- (M) inability to effectuate substantial consummation of a confirmed plan;
- (N) material default by the debtor with respect to a confirmed plan;
- (O) termination of a confirmed plan by reason of the occurrence of a condition specified in the plan; and
- (P) failure of the debtor to pay any domestic support obligation that first becomes payable after the date of the filing of the petition.

20.) No "cause" can be proven.

21.) In particular there has been no mismanagement of this estate. All steps taken by the Debtor in this case have assured this Court and Creditors that mismanagement does not occur.

WHEREFORE THE DEBTOR REQUESTS THIS Court deny the relief requested and set this matter for hearing on January 23, 2007 at 10:00 A.M. Billings, Montana.

/s/ William L. Needler
Attorney for
Incredible Auto Sales L.L.C

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Case No. 06-60855-RBK

Judge Ralph B Kirscher

Hearing January 23, 2007

At 10:00 A.M. Billings Montana

NOTICE OF HEARING

To the Service List:

Please be advised that on January 23, 2007 the Debtor's Second Amended Response, Resistance and Objection to Conversion will be heard in the Bankruptcy Courtroom at Billings, Montana at 10:00 A.M. at:

Hearing Room
Federal Building
Fifth Floor
316 No 26th Street
Billings, Montana

Should you have any questions concerning this hearing and/or the Debtor you may call the Debtor's Attorney at (910) 673-1820.

/s/ William L. Needler

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Case No. 06-60855-RBK

Judge Ralph B Kirscher

Hearing January 23, 2007

At 10:00 A.M. Billings Montana

NOTICE OF FILING OF RESPONSE, RESISTANCE AND OBJECTION

PLEASE TAKE NOTICE, that on January 11, 2007 that the attached SECOND AMENDED RESPONSE, RESISTANCE AND OBJECTION TO THE U.S. TRUSTEE'S MOTION TO CONVERT THE CHAPTER 11 TO A CHAPTER 7 AND A REQUEST FOR A SETTING FOR HEARING of this Objection is for JANUARY 23, 2007 AT 10:00 A.M BILLINGS, MONTANA, Federal Building, Fifth Floor, 316 N 26th Street, Billings,

Montana was filed with the United States Bankruptcy Court for the District of Montana,.
(A copy of the Objection, Notice of Hearing and Notice of Filing are attached.)

/s/ William L. Needler

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PROOF OF SERVICE

William L. Needler, an attorney, certifies that he filed this Second Amended Response, Resistance and Objection and Notice of Hearing on January 11, 2007 with the Clerk of the above Court via CM/ECF electronic filing and the persons listed by the Court were served electronically.

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This Attorney also certifies that he also caused to be served, a copy of the above Objection and Notice as attached hereto, to the persons listed below served by Facsimile Service from the Attorneys offices on January 11, 2007.

/s/ William L. Needler

William L. Needler